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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 DALE P. DAVIS,

11 Plaintiff,

12 v.

13 BRENDA POWERS, *et al.*,

14 Defendants.

Case No. C08-5751 FDB/KLS

ORDER RE: SERVICE OF
AMENDED COMPLAINT

15 This civil rights action has been referred to the undersigned Magistrate Judge pursuant to
16 Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. On December 16, 2008, Plaintiff Dale P. Davis
17 filed a complaint and paid the filing fee of \$350.00 (Receipt # T-4859). Dkt. # 1. On January 30,
18 2009, he was ordered to amend his complaint or show cause. Dkt. # 3. On February 19, 2009, Mr.
19 Davis filed his Amended Complaint. Dkt. # 4. As Mr. Davis is not proceeding *informa pauperis* in
20 this matter, it is his obligation to serve copies of the Summons and Amended Complaint upon the
21 named Defendants.

22 On February 19, 2009, Mr. Davis filed a praecipe to issue summons. Dkt. # 7. However,
23 Mr. Davis attached only one summons and it is addressed to the "Attorney General of Washington
24 for Ms. Powers." *Id.*, p. 2.¹ Mr. Davis must submit a properly completed summons (stating the
25 name and address of defendant) for each named defendant to the Clerk before the Clerk will sign,
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27 ¹CM/ECF pagination.

1 seal, issue and return a summons to Mr. Davis for each defendant to be served.²

2 Mr. Davis is directed to Rule 4 of the Federal Rules of Civil Procedure, which sets forth the
3 rules and procedure for service of the Summons and Complaint. Pursuant to Rule 4(m), Mr. Davis
4 must serve copies of the Summons and Complaint upon each named Defendant within 120 days
5 after the filing of the Complaint. Unless Mr. Davis can show good cause for his failure to serve, the
6 Court shall dismiss the action without prejudice as to each defendant not served or shall extend the
7 time for service. Fed.R.Civ.P. 4(m).

8 Filing and Service by Parties, Generally. All original documents and papers submitted for
9 consideration by the Court in this case, are to be filed with the Clerk of this Court. The originals of
10 all such papers shall indicate in the upper right-hand corner the name of the Magistrate Judge to
11 whom the copies are to be delivered. The papers shall be accompanied by proof that such
12 documents have been served upon counsel for the opposing party (or upon any party acting *pro se*).
13 The proof shall show the day and manner of service and may be written acknowledgment of service,
14 by certificate of a member of the bar of this court, or by affidavit of the person who served the
15 papers.

16 Motions. Any request for Court action shall be set forth in a motion, properly filed and
17 served. The motion shall include in its caption (immediately below the title of the motion) a
18 designation of the Friday upon which the motion is to be noted upon the court's calendar. That date
19 shall be the third Friday following filing of the motion (fourth Friday for Motions for Summary
20 Judgment). All briefs and affidavits in opposition to any motion shall be filed and served not later
21 than 4:30 p.m. on the Monday immediately preceding the Friday appointed for consideration of the
22 motion. If a party fails to file and serve timely opposition to a motion, the court may deem any
23 opposition to be without merit. The party making the motion may file, not later than 4:30 p.m. on
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25 ²The Court also notes that two Declarations of Service were filed in this case indicating an
26 attempt to serve the original complaint on Defendants Anderson and Harris. Dkts. # 5 and 6.
27 However, Mr. Davis was ordered to file an amended complaint (Dkt. # 3), and summonses were
28 never issued for service of his original complaint. Thus, any prior attempts at service are not
effective.

1 the Friday designated for consideration of the motion, a response to the opposing party's briefs and
2 affidavits.

3 Motions for Summary Judgment. If one of the parties files a motion for summary judgment
4 pursuant to Federal Rules of Civil Procedure 56, the opposing party should acquaint him/herself
5 with Rule 56. Rule 56 requires a nonmoving party to submit affidavits or other evidence in
6 opposition to a motion for summary judgment if the moving party has shown the absence of issues
7 of material fact and an entitlement to judgment as a matter of law. A nonmoving party may not rest
8 upon the mere allegations or denials of prior pleadings. Rather, successful opposition to a motion
9 for summary judgment requires the nonmoving party to set forth, through affidavits or other
10 evidence, specific facts showing a genuine issue for trial. Failure by the nonmoving party to oppose
11 a summary judgment motion or to present counter evidence could result in the court accepting the
12 moving party's evidence as the truth, and entering final judgment in favor of the moving party
13 without a full trial. *Rand v. Rowland*, 113 F.3d 1520 (9th Cir. 1997).

14 Direct Communications with District Judge or Magistrate Judge. No direct communication
15 is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant
16 information and papers are to be directed to the Clerk.

17 Clerk's Action. The Clerk is directed to send a copy of this Order and of the General Order
18 issued by the Magistrate Judges to Plaintiff. The Clerk is also directed to send Plaintiff a summons
19 form for each named Defendant. The Clerk shall send a copy of this Order to counsel for
20 Defendants.

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22 DATED this 12th day of March, 2009.

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26 Karen L. Strombom
27 United States Magistrate Judge
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